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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2004-19416-17

[CGD05-04-108]

RIN 1625-AA00

Security Zone; Potomac and Anacostia River, Washington,
D.C. and Arlington and Fairfax Counties, Virginia.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing the waters of the Potomac River in order to safeguard individuals attending the State Funeral for former President Ronald Reagan from terrorist acts and incidents. This action is necessary to ensure the safety of persons and property, and to prevent terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

DATES: This rule is effective from 8 a.m. local time on

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June 9, 2004, through 6 p.m. local time on June 11, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05-04-108 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226-1791, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, Waterways Management Branch, at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226-1791, telephone number (410) 576-2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the Federal Register. The Department of Homeland Security designated the State Funeral for former President Ronald Reagan a National Special Security Event (NSSE) on June 11, 2004. The Coast Guard is establishing this security zone to support the United States Secret Service, the designated lead federal agency for an NSSE, in their efforts to

coordinate security operations and establish a secure environment for this highly visible and publicized event. This temporary security zone of short duration is necessary to provide for the security of high-ranking United States officials and the public at large. Additionally, the publication of an NPRM is contrary to the public interest because, immediate action is required to protect against a potential threat to U.S. national interests.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The measures contemplated by the rule are intended to protect the public by preventing waterborne acts of terrorism, which terrorists have demonstrated a capability to carry out. Immediate action is needed to defend against and deter these terrorist acts. Any delay in the effective date of this rule is contrary to public and national interests.

Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out

their mission, thereby maximizing loss of life and destruction of property using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93 in Pennsylvania, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). The ongoing hostilities in Afghanistan and conflict in Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert

because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The Captain of the Port is establishing a security zone for the State Funeral for former President Ronald Reagan to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a gathering of high-ranking officials and the public at large.

Discussion of Rule

This temporary security zone applies to all waters of the Potomac River, from the 38-51' N line of latitude that crosses the Potomac River upstream to the Key Bridge, including the waters of the Anacostia River downstream from the Highway 50 Bridge to the confluence with the Potomac River. Vessels underway at the time this security zone is implemented will immediately proceed out of the zone. We will issue Broadcast Notices to Mariners to further publicize the security zone and any revisions to the zone.

This rule temporarily requires all vessels in the designated security zone as defined by this rule to depart the security zone. However, the COTP may, in his discretion grant waivers or exemptions to this rule, either on a case by case basis or categorically to a particular

class of vessel that otherwise is subject to adequate control measures. Vessels at berth or mooring, at anchor and Public vessels will be allowed to operate within the security zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security. The operational restrictions of the security zone are tailored to provide the minimal interruption of vessel operations necessary to provide immediate, improved security for persons, vessels, and the waters of the Potomac and Anacostia Rivers in Washington, D.C. Additionally, this security zone is temporary in nature and vessels and facilities can appeal to the Captain of the Port for a waiver of the requirements of the security zone. Any hardships experienced by persons or vessels are outweighed by the national interest in protecting high ranking U.S. and foreign officials and the public at large from the devastating consequences of acts

of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate or transit on the Potomac River, from the Woodrow Wilson Memorial Bridge upstream to the Key Bridge, including the waters of the Anacostia River downstream from the Highway 50 Bridge to the confluence with the Potomac River. This security zone will not have a significant economic impact on a substantial number of small entities. Further, vessels with compelling interests that outweigh the port's security needs may be granted waivers from the

requirements of the security zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Ronald L. Houck, at Coast Guard Activities Baltimore, Waterways Management Branch, at telephone number (410) 576-2674.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comments on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. This rule is excluded from assessing the effects of the regulatory action as required by the Act because it is necessary for the national security of the United States (2 U.S.C. 1503(5)).

Taking of Private Property

This rule may effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This rule does not effect a permanent taking of private property, however this rule may result in temporary interruptions in travel or commerce requiring detours, rerouting, or delays in departure from or arrival in the port. Appropriate permission to enter or move within the zone may be granted by the COTP. Any hardships experienced by persons or vessels are necessary to the national interest in protecting the public, vessels, and vessel crews from further devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accident or other causes of a similar nature.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and

Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 - 4370f), and have concluded that there are no factors in this case that would limit the

use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph 34(g) of the Instruction, from further environmental documentation. Under figure 2-1, paragraph (34)(g) of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05-108 to read as follows:

§ 165.T05-108 Security Zone: Potomac River, Washington, D. C. and Arlington and Fairfax Counties, Virginia.

(a) Location. The following area is a security zone:

All waters of the Potomac River, from the 38-51' N line of latitude that crosses the Potomac River upstream to the Key Bridge, including the waters of the Anacostia River downstream from the Highway 50 Bridge to the confluence with the Potomac River.

(b) Regulations.

(1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(2) Public vessels and vessels at berth, mooring or at anchor are exempt from this rule.

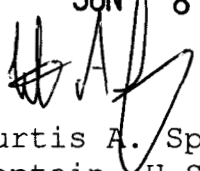
(3) All vessels in this zone are to depart the security zone. However, the COTP may, in his discretion grant waivers or exemptions to this rule, either on a case-by-case basis or categorically to a particular class of vessel that otherwise is subject to adequate control measures.

(4) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 410-576-2693 or on VHF channel 16 (157.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) Authority. In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) Effective dates. This section is effective from 8 a.m. local time on June 9, 2004, through 6 p.m. local time on June 11, 2004.

Dated: JUN 18 2004


Curtis A. Springer
Captain, U.S. Coast Guard
Captain of the Port
Baltimore, Maryland